

Margaret Cruz (“Wife”) appeals the Warrick Superior Court’s order entered pursuant to Indiana Trial Rule 60(B) modifying the division of property in the dissolution of her marriage to Richard Cruz (“Husband”). She raises the following issue, which we restate as: whether the modification of the property division was an abuse of discretion. Concluding that the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

Wife and Husband married in 1987 and have two children. On June 2, 2003, Husband filed a petition for dissolution of marriage in Warrick Superior Court. While mediation to reach a settlement agreement was unsuccessful, the parties had agreed at trial that the marital residence was worth between \$275,000 and \$280,000. Tr. pp. 9, 62-63; Ex. Vol. Respondent’s Ex. 1. The marital assets also included several rental properties, which were appraised during the pendency of the dissolution. However, neither party sought to obtain an updated appraisal value of the marital residence.

The trial court entered its dissolution decree on March 25, 2004. In its order dividing marital assets, the trial court awarded the marital residence to Wife. On August 30, 2004, Wife filed a motion for relief from the dissolution order under Trial Rule 60(B) contending, among other things, that both parties had significantly overvalued the marital residence at the final dissolution hearing and that the property was listed for sale for \$259,900 but had not yet sold. Wife submitted to the trial court a new appraisal of the home completed on July 9, 2004, which estimated its market value at \$245,000.

On October 5, 2004, the trial court made an entry deferring a ruling on Wife’s 60(B) motion regarding the value of the marital residence “until the property is sold and a

true value is determined.” Appellant’s App. p. 99. On March 28, 2005, the trial court granted Wife’s renewed 60(B) motion but deferred “fashioning a remedy until further facts are developed permitting the court to do so, and upon the sale of the residence....” Appellant’s App. p. 105.

Wife filed a second renewed motion for relief on May 17, 2005, in which she notified the court that an agreement had been reached to sell the residence, but that “given the debt owed on the residence and the realtor fees, it is anticipated that [Wife] will not receive the equity initially anticipated by the trial court.” Id. p. 108. At a hearing on Wife’s motion, the trial court ordered her to file a closing statement with the court upon sale so that the court could determine “what amounts, if any, were payable to [Wife] over and above the payment of the realtor’s fees, expenses, and the mortgage indebtedness.” Id. p. 112.

On September 12, 2005, the trial court entered an order, finding in relevant part:

3. [Wife] filed with the court on June 29, 2005 copies of the closing documents, showing [Wife] was required to pay \$1,669.65 to close the sale of the residence, and therefore received nothing as net proceeds resulting from the sale of the real estate at 7322 Hillside Drive, Newburgh, Indiana.

* * *

6. The evidence at hearing shows [Husband] paid some \$10,308.00 related to debt maintenance or other obligations on the marital residence before [Wife] was eventually able to liquidate the property for \$231,000.00, and suffering a loss on the same.... The court has not found [Wife] to be in contempt of court for failing to pay amounts due and owing on the marital residence, as the evidence shows [Wife’s] poor financial circumstances at the time prevented her from doing so.

7. To more appropriately balance the equities in this case, and the equitable distribution of the marital property between the parties, [Husband] shall be the owner of the three-quarter interest in the Lake Barkley [] lot in Cadiz, Kentucky originally set off to [Wife].... [Husband] shall pay to [Wife] the gross amount of \$56,250.00 for [Wife’s] interest in this real estate, but shall be credited with the \$10,308.00 earlier paid by him on the marital residence

obligations prior to [when] the same was sold, leaving a net amount due by [Husband] to [Wife] of \$45,942.00.

Appellant's App. p. 114. Wife filed a motion to correct error, which the trial court denied after a hearing. Wife now appeals.

Discussion and Decision

On appeal, Wife challenges the trial court's redistribution of marital assets pursuant to her motion under Trial Rule 60(B). Specifically, she contends that "the remedy fashioned by the trial court did nothing to redress the unequal distribution of marital property." Br. of Appellant at 8.

Upon motion by a party, and after a hearing, the trial court retains equitable jurisdiction under T.R. 60(B) to modify a division of property. Dusenberry v. Dusenberry, 625 N.E.2d 458, 461 (Ind. Ct. App. 1993). A motion for relief from a judgment under T.R. 60(B) is addressed to the equitable discretion of the trial court. Minnick v. Minnick, 663 N.E.2d 1226, 1228 (Ind. Ct. App. 1996).

In reviewing a trial court's division of marital property, we presume that the trial court correctly divided the property and will reverse only where the result reached is clearly against the logic and circumstances before the court. Pitman v. Pitman, 721 N.E.2d 260, 264 (Ind. Ct. App. 1999). The party challenging the trial court's division of marital assets is charged with overcoming the strong presumption that the court considered all of the evidence and properly applied the [dissolution] statute. Thompson v. Thompson, 811 N.E.2d 888, 913 (Ind. Ct. App. 2004). Subject to the statutory presumption that an equal distribution of assets is just and reasonable, the division of marital property is committed to the sound discretion of the trial court. Pitman, 721

N.E.2d at 264. On review, we may not reweigh the evidence or assess the credibility of the witnesses, and we consider only the evidence most favorable to the trial court's disposition of marital property. Trost-Steffen v. Steffen, 772 N.E.2d 500, 505 (Ind. Ct. App. 2002).

As an initial matter, we also note that “the general rule is that parties to a legal proceeding are bound by the evidence they introduce at trial and they are not allowed a second change if they fail to introduce crucial evidence. We see no reason to make dissolution proceedings an exception to this rule.” Perkins v. Harding, 836 N.E.2d 295, 302 (Ind. Ct. App. 2005) (quoting In re Marriage of Church, 424 N.E.2d 1078, 1081-82 (Ind. Ct. App. 1981)).

Wife argues that the trial court's modification of the property division does not “appropriately balance the equities in this case, and the equitable distribution of the marital property between the parties” as the trial court intended. Br. of Appellant at 12. She points out that the mediation order does nothing to reapportion the marital estate, but instead essentially provides that Husband buy out her three-quarter share in a piece of lake property.

By ordering Husband to pay Wife the agreed value of her portion of the lake property, the trial court acknowledged that the parties' undervaluation of the marital residence left Wife without any readily liquidated assets. At the September 5, 2004 hearing, after hearing testimony from both parties, the trial court made the following observation on the marital residence and ultimate property division:

Based upon the value estimated at the final hearing, the Court had anticipated the net proceeds [from the sale of the marital residence] would

result in a significant amount of tax free money to the wife and available for her use. I think this is a more difficult issue...because its not a liquidated amount and it is subject to market factors and intangible factors. So I see this in somewhat a different light, and I'm not committing that I will order that any additional amounts shall be paid to the wife, but I think the actual amount has to be liquidated before the Court can fairly review and consider that issue[.]

September 5, 2004, hearing tr. pp. 58-59.

In addition, the trial court had been presented with testimony from both parties regarding Wife's decision to move before the house sold and the difficulties she encountered in selling the property. See May 24, 2005, hearing tr. pp. 52-55, 92. In addition, Husband testified to his belief that Wife had "abandoned" the property. Id. at 92-93. Finally, Wife acknowledged her preference for "some sort of a lump cash settlement[.]" Id. at 70.

In granting Wife's 60(B) motion, the trial court did not alter its original property division. Rather, the court ordered that Husband pay Wife for her portion of the lake property in order to convert some of Wife's assets to cash. Even if the facts and reasonable inferences might allow us to reach a different conclusion, we will not substitute our judgment for that of the trial court unless its decision is clearly against the logic and effect of the facts and circumstances before it. Akers v. Akers, 729 N.E.2d 1029, 1031-32 (Ind. Ct. App. 2000). Considering only the evidence favorable to the trial court's decision, we cannot conclude that the trial court abused its discretion in its division of the marital estate.

Affirmed.

KIRSCH, C. J., and SHARPNACK, J., concur.